

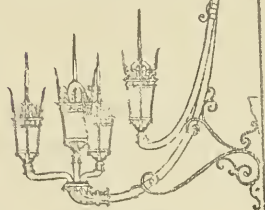
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BOSTON REDEVELOPMENT AUTHORITY

BOSTON REDEVELOPMENT AUTHORITY

VS

EDWIN COLBY



APPEARANCES:

Devin and Drohan (by David Drohan, Esquire)
188 Whiting Street, Hingham, Massachusetts,
for the Defendant.

Harry Stoddard, Esquire, Boston Redevelopment
Authority, Boston City Hall, City Hall Plaza,
Boston, Massachusetts, for the Plaintiff.

Boston City Hall
City Hall Plaza
Boston, Massachusetts
Thursday, November 20, 1980
3:15 p.m.

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PROCEEDINGS

1
2 MR. DROHAN: Mr. Chairman, I have a
3 memorandum which I would like to submit.

4 MR. FARRELL: Let me ask you the
5 same question I asked our attorney; whether or
6 not you have given him a copy of this prior to
7 today?

8 MR. DROHAN: No, I have not..

9 MR. FARRELL: You have not?

10 MR. DROHAN: No, I have not.

11 MR. FARRELL: I assume, Mr. Drohan,
12 that your request that this be held in public
13 rather than in Executive Session is still in
14 order?

15 MR. DROHAN: My client informed me
16 today he would like to have Executive Session.

17 MR. FARRELL: All right. I will
18 poll the members on this matter. Mr. Cofield?

19 MR. COFIELD: Yes.

20 MR. FARRELL: Mr. Walsh?

21 MR. WALSH: Yes.

22 MR. FARRELL: This hearing will be
23 held in Executive Session. I would like to have



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1 remaining our attorney and Miss Corcoran, our
2 personnel --

3 MR. DROHAN: No objection.

4 MR. FARRELL: No objection?

5 MR. DROHAN: No objection.

6 MR. FARRELL: Fine. May we have
7 some time to look at your memo?

8 MR. DROHAN: Please.

9 MR. WALSH: Mr. Chairman?

10 MR. FARRELL: Yes, Mr. Walsh?

11 MR. WALSH: Mr. Drohan, can you
12 tell us what legal basis, if any, you say will
13 sustain you in your opposition to the dismissal?
14 What you are relying on as a legal proposition?

15 MR. DROHAN: Mr. Walsh, what I
16 intended to do today, quite frankly, was to read
17 the memorandum into the record because of the
18 fact that I think that the Board has shifted the
19 burden to the employee in this particular case.

20 There has been absolutely no evidence
21 introduced before this Board at any time, at
22 least in my presence, that would indicate that
23 there was lack of funds in the Boston

1 Redevelopment Authority which would justify the
2 termination of Mr. Colby's employment. The only
3 thing that I know that has been submitted to
4 this Board is a memorandum that the Director
5 sent to you, which was given to me only at my
6 request after I asked to see it.

7 That memorandum does not set forth any
8 facts, it is conclusory in nature and indicates
9 that it is the Director's opinion that there
10 should be certain terminations of employees, sir,
11 and that that is being done.

12 Mr. Colby's -- Mr. Colby does not
13 have the burden of coming here and justifying
14 his employment. I respectfully submit that the
15 appointing authority, who is sitting here in a
16 quasi-judicial capacity, has the responsibility
17 of weighing the facts on both sides.

18 The purpose of the appointing authority
19 and the purpose of General Laws, Chapter 31,
20 Sections 44, 45, et cetera is to avoid arbitrary,
21 capricious decisions being made by arbitrary
22 authorities or by directors or supervisory
23 individuals, so that if an employee -- if an

1 employee is terminated he has recourse before
2 some objective Board. That is the whole scheme
3 behind this. From this appointing authority it
4 goes to the civil courts, to Superior Court and
5 all the way up. The reason for this is just to
6 avoid arbitrary and capricious firings.

7 I have heard not one scintilla of
8 evidence to this date as to why Mr. Colby was
9 fired. All I have heard is, "Mr. Colby, this is
10 your hearing. Tell us why we shouldn't fire
11 you."

12 Second of all, on October 2nd, which
13 was the first set date for the hearing, Mr. --
14 excuse me, one week after that, approximately
15 October 16th -- the Boston Redevelopment
16 Authority announced raises of approximately
17 \$350,000 to it's personnel. I mention this --
18 not that I have a right to inquire into the
19 merits of those raises, but I certainly think it
20 raises a presumption in favor of Mr. Colby that
21 one can inquire into as whether there is a
22 shortage of funds that would require lack of
23 funds as the reason for termination when raises

1 of that magnitude are being given out.

2 Now, since there is no evidence or, in
3 my opinion, no evidence has been introduced --
4 the burden, evidently, is being passed to us to
5 justify why he should not be fired. I have
6 attempted to go into that in the memorandum by
7 answering the points raised by my brother, Mr.
8 Stoddard; among which, I might point out, is
9 that at the last hearing the appointing
10 authority requested an opinion from counsel as
11 to whether or not there was "bumping" rights in
12 the B.R.A., and if there were, whether they went
13 horizontal and lateral and what Mr. Colby's
14 bumping rights are.

15 Mr. Stoddard concedes in his memorandum
16 that there are "bumping" rights; that he does,
17 in fact, have "bumping" rights, both laterally
18 and vertically. He goes on to say, however, that
19 he is not qualified because of his background.
20 That is a real gratuitous assumption.

21 I have heard no evidence whatsoever as
22 to his background; nothing. As a matter of fact,
23 I am going to prove to counsel, by going through

1 his educational background, that he is qualified;
2 and with that in mind I would now ask if I could
3 read that memorandum into the record.

4 MR. FARRELL: I am making it a part
5 of the record, Mr. Drohan. I don't know if it is
6 necessary for you to read it. We can read it. It
7 will be made part of the record -- what we are
8 reading. What will reading it into the record
9 add to the --

10 MR. DROHAN: That is my
11 presentation, my --

12 MR. SIMONIAN: Joe?

13 MR. FARRELL: Yes, Mr. Simonian?

14 MR. SIMONIAN: Are we going to get
15 a copy of the Stenographer's --

16 MR. FARRELL: Yes. It is understood.
17 I assume we will pay for our own copy?

18 MR. SIMONIAN: Yes.

19 MR. FARRELL: Mr. Drohan, with
20 respect to the allegation of lack of funds; the
21 Director, prior to the -- any of the
22 terminations -- submitted a memorandum to the
23 Authority. I don't have a copy of that

1 memorandum with me now. I don't know if Mr.
2 Stoddard has it --

3 MR. DROHAN: I have it.

4 MR. FARRELL: You do have it?

5 MR. DROHAN: Yes, sir.

6 MR. FARRELL: You say it doesn't
7 indicate lack of funds --

8 MR. DROHAN: Doesn't discuss it in
9 nature. What I am saying, Mr. Farrell, is: No
10 facts are contained therein.

11 MR. FARRELL: Well, this is --
12 when you say "no facts" you mean there are no
13 bookkeeping entries?

14 MR. DROHAN: No, I'm saying there
15 are things like, "Because of funding cutbacks
16 from the Federal government" et cetera, et
17 cetera "and because of the changing nature of
18 the Authority we are forced to make certain
19 cutbacks", and what I'm suggesting to you, sir,
20 is that the Director, in the name of cutbacks or
21 lack of funds, could at any time fire any
22 individual and just say, "Listen, lack of funds;
23 there are certain cutbacks, certain economies we

1 have to make. You just happen to be one of
2 them."

3 I think there has to be some reason
4 that there was a cut back and, secondarily, I
5 think once you announce that there is \$350,000
6 of funds within 2 weeks of the time of the
7 termination -- I think that certainly can be
8 called into question as to how much there was of
9 a lack of funds and I think, thirdly, you have
10 an obligation to advise your terminated
11 employees as to what their rights are under the
12 General Laws, particularly if they are veterans,
13 and that wasn't done here, and as to my
14 knowledge it has never be done by the B.R.A.

15 I would suggest to you that that
16 certainly becomes an ancillary issue here. They
17 neglected to notify him of his legal rights --

18 MR. FARRELL: With respect to your
19 last statement, it is my rather strong
20 impression that at the time of Notice of
21 Termination Mr. Colby was advised of his legal
22 rights.

23 MR. DROHAN: As to --

1 MR. FARRELL: Including his rights
2 of appeal, and that copies of the General Laws
3 were attached to the Notice --

4 MR. STODDARD: Notice of September
5 18th, Mr. Chairman?

6 MR. DROHAN: I don't question that.
7 I'm talking about his rights as a veteran. Under
8 General Laws 21, which is the one about a
9 veteran having a right to bump in the government --

10 MR. FARRELL: All right.

11 MR. DROHAN: I'm not saying that
12 the incorrect notice was given at a civil
13 service procedure. I am calling you on his
14 rights as a veteran. He was not advised of
15 bumping rights.

16 MR. FARRELL: As far as the
17 allegation -- your allegation with respect to
18 funds -- There are some authorities that
19 members of this Authority have simply by being
20 members of this Authority, and what goes on here
21 week after week, and it's my feeling that it is
22 rather clear that the Authority does not have
23 the funding it once had. We do not have direct

1 Federal funding any longer. The money that we
2 do obtain through UDAK and other sources is
3 clearly far less than this Authority once
4 received.

5 The director, in his memo, points out
6 that "we are forced to reduce our budget from
7 -- our administrative budget -- from ten
8 million dollars in 1980 to an estimated 6.5
9 million dollars by 1982; our reduction and our
10 administrative budget, et cetera, of 3.5 million
11 dollars." The administrative budget is made up
12 primarily of salaries. Now, if we have to reduce
13 our administrative budget by 3.5 million dollars,
14 why do you say that that is merely a conclusion
15 and not a statement of fact?

16 MR. DROHAN: I haven't seen any
17 facts introduced to support that. All I've seen
18 is a statement. I haven't seen any evidence
19 introduced as to what your budget was in the
20 past and seen what it is today.

21 MR. FARRELL: Will you agree that
22 if our budget must be reduced from ten million
23 dollars to 6.5 million dollars -- would you

1 agree that that would indicate lack of funds?

2 MR. DROHAN: I would not admit
3 anything, Mr. Chairman, because once again, the
4 appointing authority is asking the employee to
5 carry the burden. It is not our responsibility.
6 It is the responsibility of the acting authority
7 to sit as a -- in a quasi-judicial capacity to
8 find out whether or not the termination was
9 arbitrary or whether it was based on a real lack
10 of funds. I don't think it is up to us to prove
11 that.

12 I will go one step further. I think
13 there is a responsibility as to how were these
14 cuts arrived at, Mr. Chairman.

15 MR. FARRELL: I don't know if you
16 are aware of it, but at our last meeting the
17 Authority was informed that it was being forced
18 to terminate all of it's engineering contracts
19 and also to halt many of our projects now in
20 progress because of an executive order from the
21 Mayor's office with respect to capital
22 expenditures.

23 MR. DROHAN: I think that was in

1 relation to two-and-a-half, if I read the
2 article, Mr. Chairman.

3 MR. FARRELL: Yes, it was.

4 MR. DROHAN: This firing took place
5 well before two-and-a-half. I don't see what
6 relevancy this would have on that particular
7 issue.

8 MR. FARRELL: Well, it certainly
9 has some relevancy with respect to the present
10 financial condition of this Authority.

11 MR. DROHAN: After his termination.

12 MR. STODDARD: Mr. Farrell, I point
13 out that the termination does not occur until
14 this Board determines --

15 MR. FARRELL: Mr. Colby is still
16 being paid, is he not?

17 MR. DROHAN: That's correct.

18 MR. FARRELL: He is still being
19 paid, pending the results of this hearing?

20 MR. DROHAN: That's correct, Mr.
21 Farrell.

22 MR. FARRELL: So, he has not yet
23 been terminated?

1 MR. DROHAN: That's correct.

2 MR. FARRELL: Well, I have your 15
3 page memo, as do the other Authority members,
4 and in fairness to Mr. Colby I would like some
5 time to read it, study it.

6 MR. DROHAN: Please.

7 MR. FARRELL: Would it be all right
8 if I did it other than right now?

9 MR. DROHAN: Sure.

10 MR. FARRELL: Thank you.

11 MR. SIMONIAN: Do you have another
12 copy, Mr. Drohan?

13 MR. DROHAN: Yes, sir. Did I give
14 you one?

15 MR. SIMONIAN: No.

16 MR. DROHAN: My apologies.

17 (Document exhibited to Mr.
18 Simonian.)

19 MR. DROHAN: My only problem is:
20 This is the third time we have been here.

21 MR. FARRELL: I was going to
22 suggest that -- I was going to invite a motion
23 -- not that the matter be continued again, I

1 don't that would serve any purpose, but invite a
2 motion that the matter be taken under advisement
3 and that the Board members study Mr. Drohan's
4 memorandum and opposition.

5 MR. DROHAN: What is the procedure
6 under the open meeting? Would the decision be
7 made publicly?

8 MR. FARRELL: The decision must be
9 made publicly.

10 MR. DROHAN: Will it be made here
11 at a certain date; that is my question.

12 MR. FARRELL: Yes, it will and I
13 believe that, Mr. Simonian, if we take this
14 under advisement and the Board elects to act one
15 way or another on it, say at our next meeting,
16 Mr. Colby is entitled to receive notice that the
17 Board intends to act on it at a particular time;
18 is that correct?

19 MR. DROHAN: Well --

20 MR. FARRELL: Correct or not, I'll
21 see to it that he does.

22 MR. SIMONIAN: How do you intend to
23 act on it?

1 MR. FARRELL: I'll have the matter
2 put on the agenda.

3 MR. DROHAN: My point, Mr. --

4 MR. SIMONIAN: Then it is voted on
5 that we are going to act on it at the next
6 meeting.

7 MR. DROHAN: I would prefer, quite
8 frankly, to have the memorandum read into the
9 record right now and have the decision made.
10 Everything will be before the Board at this time.
11 The employer, to my knowledge, or the appointing
12 authority -- the Director, excuse me -- has
13 put his case in. You are now asking us to make
14 our case. I would like to make it today; make my
15 arguments, rest and let the Board make it's
16 decision.

17 MR. FARRELL: All I am suggesting
18 is that you have today, for the first time,
19 supplied the Board with a 15-page memorandum --

20 MR. DROHAN: Mr. Chairman --

21 MR. FARRELL: -- and I would like
22 to read and study this memorandum.

23 MR. DROHAN: Fine. I would like to

1 read it into the record. I have been back here
2 -- the appointing authority -- this is the
3 third time we have been back here. It is costing
4 Mr. Colby a great deal of money. You gave me an
5 opportunity to reply to this memorandum. I have
6 taken that opportunity and have so replied. I
7 would like now to read it into the record and
8 make my arguments publicly.

9 MR. FARRELL: My memory was that
10 this matter was continued at your request --

11 MR. DROHAN: I believe at your
12 request also, Mr. Chairman, to give me an
13 opportunity to reply to a memorandum which was
14 supposed to be forwarded to me and which never
15 was.

16 MR. FARRELL: My memory is, Mr.
17 Drohan, that you stated that you or your client
18 would be out of town and requested that the
19 matter be continued.

20 MR. STODDARD: That was the first
21 continuance. The second one was after the
22 presentation of my memorandum to the Board and
23 Mr. Drohan at that time turned down my offer to

1 adjourn for a short time to study a two-page
2 memorandum. He turned that down as a ridiculous
3 suggestion.

4 MR. FARRELL: And, as I recall, you
5 did request time to comply with that.

6 MR. DROHAN: I think you agreed
7 with me.

8 MR. FARRELL: I did. Two of those
9 continuances were at your specific request is
10 what I'm pointing out.

11 MR. DROHAN: If the Board wants to
12 rule it that way, fine. I don't look at it that
13 way.

14 MR. FARRELL: I have a copy of a
15 letter somewhere which stated that Mr. Colby was
16 --

17 MR. DROHAN: No, no. This is the
18 third date we have been back here. I would like
19 today to wrap up this matter once and for all. I
20 see nothing to be gained by postponing this.

21 MR. WALSH: Mr. Chairman?

22 MR. FARRELL: Mr. Walsh?

23 MR. WALSH: What you are saying is

1 you want to submit your memorandum --

2 MR. DROHAN: I want to read it into
3 the record, if I may.

4 MR. WALSH: Let me ask you this
5 question: You talk about the statute in General
6 Law 12126 in your request on page 6 --

7 MR. DROHAN: Yes, sir.

8 MR. WALSH: Do you have any
9 evidence that there is a violation of this
10 chapter insofar as Mr. Colby is concerned; this
11 section? In other words, are you able to point
12 to --

13 MR. DROHAN: I am --

14 MR. WALSH: -- a job which you
15 feel Mr. Colby --

16 MR. DROHAN: Yes, sir.

17 MR. WALSH: -- Colby should be
18 able to step into?

19 MR. DROHAN: Yes, sir.

20 MR. WALSH: What is the job?

21 MR. DROHAN: Horizontally he can
22 take any job right now that is being filled, and
23 I believe many are constantly being filled by

1 people without his qualifications; anything in
2 his department, the Transportation Planning
3 Department; anything below Director he can do.

4 On a lateral basis -- and I might
5 point out, Mr. Chairman, if you read Mr.
6 Stoddard's memorandum he talks about the Chief
7 Project Engineer and how my client is not
8 qualified to do the job and I just would like to
9 point out to you, if I may direct myself to that
10 one issue, Page 9. I just want to read this one
11 portion, if I may.

12 It states that -- the third position of
13 Mr. Stoddard's memorandum deals with the duties
14 and responsibilities of engineers in the
15 Engineering Department. Mr. Stoddard concludes
16 that the duties and responsibilities of
17 engineers in the Engineering Department are
18 substantially different than Mr. Colby's duties
19 as Deputy Director in the Transportation
20 Planning Department.

21 I would assume and hope that this is
22 true, otherwise the B. R. A. would have two
23 different departments performing the exact same

1 function. However, once again, I don't think
2 this is the issue and I believe this is
3 irrelevant. The issue is whether or not Mr.
4 Colby has the background and ability to perform
5 the functions of a Chief Project Engineer.

6 Mr. Walsh, I am now about to answer the
7 question which you just raised. How can this be
8 determined? Let's begin by looking at the
9 specifications for a Chief Project Engineer as
10 established by the B. R. A. The specifications
11 are as follows:

12 Education: Minimum - Bachelor of
13 Science and Engineering. Registered Professional
14 Engineer --

15 MR. FARRELL: May I --

16 MR. DROHAN: I'm answering this
17 question, if I may, Mr. Chairman. Experience:
18 Minimum of 10 years broad civil engineering
19 experience, including some experience in
20 engineering project management. You have a Chief
21 Project Engineer named Mr. William Barbato and I
22 have called the Board of Registration of
23 Engineers and Land Surveyors in the Commonwealth

1 of Massachusetts and he is not a civil engineer
2 or, at least, he is not registered as a civil
3 engineer in this Commonwealth.

4 Now, if you tell me that I am talking
5 about your own specifications and you have a
6 person who is not an engineer and a
7 specification is that he must be and here's a
8 man who has been a civil engineer for 27 years,
9 I respectfully suggest to you that that man is
10 qualified to do that job. That's one.

11 MR. WALSH: can you respond to that,
12 Mr. Stoddard?

13 MR. FARRELL: One thing before Mr.
14 Stoddard responds to that. The statement that
15 you have in your memorandum -- that Mr. Colby
16 has never been asked one question about his
17 background -- I don't believe is accurate.

18 Mr. Colby was before this authority at
19 the time he received notice of termination and I
20 asked him about his background and Mr. Colby at
21 that hearing -- meeting -- gave us his
22 background. I recall it distinctly and I think
23 Mr. Colby will agree that at that meeting he

1 advised the Board of his educational background,
2 his professional background and what he had done
3 for the Authority.

4 MR. DROHAN: Fine. I have no
5 problems.

6 MR. FARRELL: Okay. Your statement
7 that he has never been asked one question about
8 his background is inaccurate?

9 MR. DROHAN: I think it is. I'm
10 talking now in an evidentiary capacity. The
11 background that I go into is his work background
12 for 27 years. I don't think he listed every job
13 that he has had for the past 27 years. I have
14 done that here.

15 MR. FARRELL: I don't know whether
16 he did it for 27 years, but I do distinctly
17 recall Mr. Colby, in response to either my
18 questions or questions of the Board or maybe
19 even voluntarily set forth his educational and
20 professional training; background, what his
21 duties were with the Authority --

22 MR. DROHAN: I'll agree that he
23 said those things.

1 MR. FARRELL: Thank you.

2 MR. DROHAN: We have a copy of that
3 statement, Mr. Farrell, and and I would like to
4 introduce that statement into the record.

5 MR. FARRELL: All right, fine.

6 MR. DROHAN: This is the statement
7 -- is this the statement, Mr. Colby, that you
8 read --

9 MR. COLBY: On the second of
10 October.

11 MR. DROHAN: I would like to
12 introduce that and make that part of the record.

13 (Document exhibited to Mr.
14 Farrell.)

15 MR. FARRELL: I believe it is part
16 of the record already.

17 MR. DROHAN: Since there wasn't any
18 statement at that time --

19 MR. FARRELL: I believe Mr. Colby
20 at that time supplied us with a copy of that and
21 the statement was made a part over the record.

22 MR. DROHAN: Fine. Thank you. I
23 appreciate it. If I repeated it I'm sorry. Mr.

1 Walsh, did I answer your question, sir?

2 MR. WALSH: I am waiting to hear
3 from Mr. Stoddard on the bumping matter.

4 MR. STODDARD: Yes. Mr. Drohan's
5 statement about the statute, in my mind, is too
6 narrow a treatment of the full statutory
7 definition that the Board had to consider. The
8 bumping rights that Mr. Colby would have would
9 be only if similar offices or positions in the
10 same grade or group exists elsewhere in the
11 Authority and "offices and positions which are
12 similar" are defined in another statute as
13 "those which are substantially alike in duties,
14 responsibilities, organizational relationships,
15 qualifications and other significant
16 characteristics."

17 It doesn't come down to simply a matter
18 of whether Mr. Colby's qualifications would
19 enable him to do some other job in the Authority.
20 He has to be able to occupy a similar office or
21 position which is substantially alike in these
22 following areas --

23 MR. WALSH: You mean there has to

1 be available for him to occupy another position?

2 MR. STODDARD: If it were occupied
3 by somebody else he would have a right to bump
4 that person out, assuming that they were junior
5 in the service to Mr. Colby.

6 Now, my memorandum to the Board was
7 based on an investigation I made by interviewing
8 the head of the Engineering Department to find
9 out whether there were similar offices and
10 positions of this kind.

11 MR. DROHAN: As to what kind?

12 MR. STODDARD: Which are
13 substantially alike in duties, responsibilities,
14 organizational relationship, qualifications and
15 other significant things. From my conversation
16 on this subject I found that while the
17 educational background for a civil engineer
18 should basically be the same, that the -- that
19 Mr. Colby's area of specialty was basically a
20 sub-specialty of civil engineering and did not
21 fully represent the full duties of the
22 Department.

23 Mr. Orbman, the head of the Engineering

1 Department told me that he would ordinarily
2 require four years of experience in the various
3 areas that are covered by engineers in the
4 Engineering Department; such areas as contract
5 preparation, street design, lighting, pavement
6 design, sidewalk design, curb repaving, storm
7 drains, sewer and water lines, pavement,
8 landscaping, sea walls, building repair, park
9 and playground. These are broader areas than I
10 understand Mr. Colby has qualifications in.

11 MR. DROHAN: Mr. Chairman, this is
12 the rankest form of hearsay.

13 MR. FARRELL: May you let Mr.
14 Stoddard finish?

15 MR. DROHAN: May I note my
16 objection?

17 MR. FARRELL: Your objection is
18 noted.

19 MR. STODDARD: Now, based on my
20 questioning of the department head for
21 Engineering, I wrote the Board a memorandum
22 which concluded that there is no similar office
23 or position which is substantially alike in the

1 areas set forth in the statute to enable Mr.
2 Colby to bump out another engineer and I stand
3 by that recommendation to the Board and I do not
4 think that Mr. Drohan is presenting a full
5 picture of the statutory requirements.

6 I believe that he has narrowed the
7 statutory focus only as to certain issues that
8 he believes would favor Mr. Colby's case. I
9 would stand by the opinion that I have rendered
10 to the Authority.

11 MR. FARRELL: Mr. Drohan?

12 MR. DROHAN: I would like to read
13 my memorandum, if I may.

14 MR. FARRELL: You may read it.

15 MR. DROHAN: Thank you, sir.

16 MR. SIMONIAN: Vertical?

17 MR. STODDARD: It says "similar
18 grades or office." That's not vertical. If I
19 read --

20 MR. DROHAN: You have already
21 conceded to both vertical and horizontal bumping
22 rights.

23 MR. STODDARD: This is not a

1 concession, this is what the statute sought. The
2 statute price for vertical and horizontal --

3 MR. DROHAN: That was my issue.
4 That is a very important position.

5 MR. FARRELL: I take it,, Mr.
6 Stoddard, it is your opinion that when you talk
7 about vertical bumping rights, that does not
8 mean that Mr. Colby would have a right to bump
9 anyone in the department below him, regardless of
10 what job he is holding?

11 MR. STODDARD: No, I would not say
12 that. It would have to be a similar group.

13 MR. DROHAN: I would agree with
14 that.

15 MR. WALSH: How can it be vertical
16 on the down- side then -- vertical at all? .

17 MR. FARRELL: Same question. What
18 is the difference between horizontal and
19 vertical if the statute provides that it must be
20 similar grade -- similar duties?

21 MR. COFIELD: Sounds like, by
22 definition, it means horizontal

23 MR. WALSH: Where do you get the

1 specification concerning vertical in the statute?
2 Is it spelled out?

3 MR. STODDARD: No, it is not. Those
4 terms are not used in the statute itself. The
5 statute refers only to similar offices or
6 positions in the same group or grade which are
7 substantially alike in the areas that I
8 mentioned.

9 MR. WALSH: And do you interpret
10 this as meaning both vertical and horizontal?

11 MR. STODDARD: No, I do not. I
12 didn't mean to give that impression. For
13 vertical bumping to take place within the
14 Transportation Planning Department Mr. Colby
15 would only be able to replace two present
16 employees. These two employees are presently at
17 Grades 13,4 and 13,5 compared to Mr. Colby's
18 grade of 16,7. That would carry a salary of --
19 well, Mr. Colby's present salary is \$31,768. The
20 two positions that he would be eligible to
21 replace would be paid \$20,547 or \$19,947

22 MR. COFIELD: If I can interrupt
23 here; why could he not replace the one at 13,4?

1 MR. STODDARD: Because that would
2 be a person who is also a veteran and who is
3 senior in service to Mr. Colby.

4 MR. COFIELD: Okay.

5 MR. STODDARD: If I may just make
6 one more statement on this. The positions
7 vertically down the line are also not originally
8 the same as Mr. Colby's position, nor are they
9 the same responsibility and duties. It is
10 possible he might be able to do the job of
11 secretary if he could type. That is not what the
12 statute implies here.

13 MR. COFIELD: Let me ask a question,
14 if I can. Mr. Colby, are you in a supervisory
15 capacity over other people in the department?

16 MR. COLBY: Yes.

17 MR. COFIELD: I guess I don't have
18 a clear impression, Mr. Stoddard, of what you are
19 saying. Maybe it is the same question that Mr.
20 Walsh asked about lateral -- not lateral,
21 vertical bumping. If he is in a supervisory
22 capacity -- not just him but anybody in a
23 supervisory capacity -- presumably they are

1 prepared, equipped, ready to fulfill the duties
2 for the people of whom they supervise; is that
3 not the case?

4 MR. STODDARD: Yes, it is the case,
5 but I was saying that the office or position
6 that Mr. Colby has is not substantially alike to
7 an inferior position which he previously
8 supervised. That position below him is, by
9 definition, not substantially alike because it
10 does not involve any more important
11 responsibilities than Mr. Colby had.

12 I also understand that each of the
13 persons in the Transportation Planning
14 Department has what they call a "sub-function,"
15 which is a specialty that each person has in the
16 department. I understand that Mr. Colby has a
17 special sub-function and so does each of the
18 other persons he would be theoretically eligible
19 to bump. This is different duties and
20 responsibilities, as I understand it, of the
21 statute and you do not --

22 MR. SIMONIAN: Or --

23 MR. DROHAN: The positions below

1 Mr. Colby are so dissimilar that he told --
2 what is the position you held prior to your
3 present job?

4 MR. COLBY: It was a grade 15, I
5 believe, as a --

6 MR. DROHAN: That is what he is
7 talking about. Did you hold that job?

8 MR. COLBY: Yes.

9 MR. DROHAN: Did you perform those
10 functions?

11 MR. COLBY: 13, 14 and 15?

12 MR. DROHAN: I would like to read
13 to you, if I may, the definition of "bumping
14 rights" issued by the Personnel Division, and I
15 quote " --

16 MR. STODDARD: I would like to
17 enter an objection to that as being irrelevant..
18 The statute spells out veteran bumping rights
19 and that pre-empts anything you may have from
20 the City of Boston Personnel Department.

21 MR. DROHAN: It says, "Employees
22 with a lower grade or grades in succession in
23 the official qualified service may go to the

1 next lowest class in succession. This is called
2 "bumping" and causes a chain reaction by
3 displacing an employee with less seniority who
4 is doing the same or similar duties in the
5 department." I think that answers the question
6 you just raised.

7 MR. FARRELL: That is obviously
8 -- that is vertical -- what I would consider
9 to be vertical bumping rights -- that you could,
10 if you have the right -- you could bump the
11 person next beneath you on the pay scale.

12 MR. DROHAN: Right; simple chain
13 reaction.

14 MR. FARRELL: Aside from the effect
15 of it, we -- the Boston Redevelopment Authority --
16 do not have such a policy.

17 MR. STODDARD: Nor is this a civil
18 service position, Mr. Chairman, which --

19 MR. DROHAN: The statutes in
20 Section 41 and so forth and so on shall be
21 applicable to veterans within the departments.

22 MR. FARRELL: Then it does not
23 spell out any vertical bumping rights?

1 MR. DROHAN: No, but I would like
2 to tell you what it does say, Mr. Chairman, and
3 I am going to direct myself to similar offices
4 and positions, if I may.

5 It says that -- Mr. Stoddard, in his
6 memorandum states that a veteran cannot be
7 separated from his office or position while
8 similar offices or positions in the same grade
9 or group exist in the agency. The memorandum
10 then defines "similar offices and positions" and
11 purports to obtain that information from General
12 Laws, Chapter 30, Section 45.

13 I respectfully suggest to you that
14 after reading that Chapter and Section on a
15 number of occasions there is no definition of
16 "similar offices and positions" contained in
17 that Section.

18 The real test in the lateral bumping
19 rights case is to look at the language of
20 General Laws, Chapter 121, Section 26QQ which
21 reads, in part, "If the separation in the case
22 of such unclassified offices or positions
23 results from lack of work or lack of money, such

1 a veteran shall not be separated from his office
2 or position while similar offices or positions
3 in the same group or grade, as defined in
4 Section 45 of Chapter 30 exists."

5 "Position" is then defined as a job
6 which may be held by an individual employee and
7 that there may be more than one position in the
8 same class. The more important definition,
9 however, is that of "job group." This is defined
10 as, and I quote, "a unit of the general salary
11 schedule which includes all classes in the
12 position classification plan which are
13 sufficiently comparable in value as regards
14 duties and responsibilities, irrespective of the
15 field of work of which they form a part, so that
16 the same salary range may be made to apply to
17 all classes in the same unit of the general
18 salary schedule."

19 To understand the importance of that
20 definition one must also look at the definition
21 of "Class" contained in the same Section.

22 "Class" is defined as "a group of positions
23 forming part of the classified service of the

1 Commonwealth established by Sections 45 to 50
2 inclusive, and sufficiently similar in respect
3 to duties and responsibilities that the same
4 descriptive title may be used to designate all
5 positions allocated to the class, the same
6 general entrance qualifications may be required
7 of incumbents of positions in the class, the
8 same general tests or fitness may be used to
9 choose qualified employees, and the same schedule
10 of pay may be made to apply under the same or
11 substantially the same employment conditions.",.

12 I would respectfully suggest to you
13 that at the very minimum that tells us that Mr.
14 Colby has a right to bump anyone who, in the
15 same general salary schedule -- I would
16 suggest to you that if the entrance requirements
17 for that position are similar then he has a
18 right.

19 I would suggest to you further that the
20 Chief Project engineer certainly fits within
21 that. Mr. William Barbato is not an engineer, at
22 least not an engineer registered with the
23 Commonwealth of Massachusetts, and he also is

1 not a veteran -- excuse me, he is a veteran of
2 less seniority than Mr. Colby. So, I think that
3 that's one position right there that he is
4 eligible for.

5 MR. FARRELL: Well, I'm thinking
6 out loud. I'm looking in the office of the
7 Deputy Director for Planning. It should be noted
8 for the record that on the memorandum you have
9 submitted; one of the names that you have listed
10 in that department, Janna Howard -- she has
11 resigned.

12 MR. DROHAN: I have never listed
13 any such name in my memorandum.

14 MR. STODDARD: That is in the
15 listing furnished by me, Mr. Farrell, for the
16 Board.

17 MR. FARRELL: All right. So that
18 there are -- there is a line drawn above
19 "Senior Technician" Now, you have there in that
20 department, beneath Mr. Colby, Leon Saplan --

21 MR. COLBY: Richard McAlister and
22 Mr. Neitz?

23 MR. STODDARD: Yes.

1 MR. FARRELL: Are any of those, Mr.
2 Stoddard -- are any of those positions being
3 held by people who are performing similar duties
4 to Mr. Colby?

5 MR. STODDARD: I believe that under
6 the statute they are not substantially similar
7 in duties, responsibilities, organizational
8 relationships, qualifications and other
9 significant characteristics. These would be
10 vertical bumps, which I do not not agree are
11 provided for under our statute.

12 I would like to point out that the
13 definitions which Mr. Drohan is drawing upon
14 -- the definition of class -- has no bearing
15 in the B. R. A.'s own statute. The word "class"
16 is not used in our statute. The definition of "job
17 group" has a very similar thrust with regards to
18 jobs being comparable and as regards to duties
19 and responsibilities, and the Section 45 of
20 Chapter 30, three times it talks about
21 "positions which are related in duties
22 responsibilities, organizational relationships,
23 qualifications and other significant

1 characteristics."

2 I can't see how there can be any debate
3 as to whether the definition is of jobs which
4 are in the same group or grade, and I just don't
5 see how a case can be made that you can
6 vertically bump into a position which is \$10,000
7 difference in pay, which is three grades and
8 four steps in level, which are very dissimilar
9 in administrative responsibility and which are
10 different in areas of specialty.

11 MR. FARRELL: What about -- could
12 you answer Mr. Drohan's statements with respect
13 to Mr. Barbato, -- maybe Mrs. Corcoran can be
14 of some assistance here as to whether or not Mr.
15 William Barbato performed similar duties and has
16 similar responsibilities as did Mr. Colby?

17 MRS. CORCORAN: I was present at
18 Mr. Stoddard's interview with the Chief Engineer
19 and it was our impression that, in fact, no, he
20 did not have similar responsibilities.

21 MR. FARRELL: Would you tell us
22 what Mr. Barbato's duties are as compared to Mr.
23 Colby's?

1 MRS. CORCORAN: Mr. Barbato's
2 duties are a lot more broad, in my understanding.
3 I have to admit a certain amount of ignorance to
4 this since I am not an engineer, but my clear
5 impression is that Mr. Barbato has a much more
6 varied background and experience.

7 He has been working with the Authority
8 for 15 years in that particular field of
9 engineering, as opposed to the specialty that
10 Mr. Colby has in transportation engineer.

11 MR. STODDARD: May I add to that,
12 Mr. Farrell? The position held by William
13 Barbato is the only position in the Authority
14 which is at the same grade and step and same
15 salary as Mr. Colby, but based on my interview
16 with the head of the Engineering Department, I
17 would agree with Ms. Corcoran's characterization
18 of Mr. Barbato's position as being one that
19 involved a broader range of responsibilities and
20 somewhat broader experience and is broader than
21 the transportation specialty, which is part of
22 the Transportation Planning Department.

23 MR. FARRELL: Is Mr. Orpin

1 available?

2 MRS. CORCORAN: I'll check.

3 MR. DROHAN: Mr. Chairman, you know,
4 on the duties and responsibilities issue here,
5 Mr. Stoddard said that while the basic
6 educational requirements for all of these
7 engineering positions are basically alike --

8 MR. STODDARD: He has a B.S. in
9 Engineering is what it amounts to.

10 MR. DROHAN: It says in your own
11 specifications that he be a Registered
12 Professional Engineer. That is in the B.R.A.
13 specifications -- I have it with me -- for
14 the job.

15 MR. SIMONIAN: What does that have
16 to do with the fact that Barbato is not
17 registered?

18 MR. DROHAN: Your own job
19 specifications for the job --

20 MR. SIMONIAN: But doesn't --

21 MR. DROHAN: But he is saying that
22 this gentleman does not have the experience and
23 the qualifications to hold that particular job

1 and --

2 MR. FARRELL: I don't think he is
3 saying that at all.

4 MR. STODDARD: I am saying it is
5 different from the senior position --

6 MR. SIMONIAN: I am saying it is a
7 complete fraud. The job doesn't call for it.
8 Does he qualify for the job description?

9 MR. DROHAN: Yes.

10 MR. SIMONIAN: Regardless of the
11 present holder?

12 MR. DROHAN: That's correct.

13 MR. SIMONIAN: Why do you say the
14 present holder doesn't have the registration --

15 MR. DROHAN: Because your specs
16 specifically say he is to be an engineer.

17 MR. FARRELL: Mr. Orpin, I would
18 like you to answer some questions, if you might,
19 with respect to the similarities of the duties
20 and responsibilities of Mr. Colby, as he was
21 Deputy Director of Traffic Planning -- and
22 compare that with the duties of William Barbato,
23 as he was Chief Project Engineer. Do you follow

1 me?

2 MR. DROHAN: I object and I would
3 like to know who this individual is, I have a
4 right to know whoever you are putting on in the
5 case for the City of Boston Redevelopment
6 Authority --

7 MR. FARRELL: For the record, let
8 me -- I'll have Mr. Orpin identify himself.
9 You indicated before, Mr. Drohan, that you did
10 not want to see the Authority act in an
11 arbitrary and capricious manner --

12 MR. DROHAN: That's correct.

13 MR. FARRELL: -- and I'm trying to
14 obtain some facts with respect to what I
15 construe the statute to mean. Mr. Orman, for the
16 record would you identify yourself? I might add
17 to that that I'm putting in witnesses in this
18 case for nobody.

19 MR. ORPIN: My name is Orpin and I
20 have been in this position for 23 years. I'm
21 also a graduate engineer and hold two degrees in
22 engineering. I'm also a Registered Engineer and
23 Registered Land Surveyor, Commonwealth of

1 Massachusetts.

2 MR. FARRELL: Are you familiar with
3 the duties that were performed by Mr. Colby as
4 Deputy Director of Traffic Planning?

5 MR. ORPIN: I'm familiar in general
6 with them.

7 MR. FARRELL: Are you familiar with
8 the duties of Mr. Barbato's --

9 MR. ORPIN: Intimately familiar
10 with Mr. Barbato's duties.

11 MR. FARRELL: Okay. Now, could you
12 tell us something about both of those positions
13 and whether or not they are similar in
14 responsibilities --

15 MR. DROHAN: I object.

16 MR. FARRELL: -- and duties?

17 MR. DROHAN: He said he is only
18 somewhat familiar with Mr. Colby's --

19 MR. ORPIN: What? Well, I'm very
20 familiar with what a Traffic Engineer is and
21 what it does. I know what my engineer does that
22 Mr. Colby does not do.

23 MR. FARRELL: Would you tell us --

1 MR. ORPIN: Mr. Farrell, Mr Barbato
2 has, in all of his jobs in my department -- and
3 I have used him for many of the projects -- he
4 mans a full coordination of all the surface
5 extra work that has to take place and the
6 coordination with all the public agencies --
7 both within the City of Boston and state,
8 federal, commissions, the administration of the
9 engineering contracts which, involve sewer,
10 water, storm drains, streets, bridges, treatment
11 plants, sea walls, building repair.

12 It has involved demolition in the past,
13 construction -- a complete host of civil
14 engineer, public works-type of work. The
15 engineers are also familiar with traffic work,
16 although they don't perform that specifically,
17 since the Authority has had a separate
18 department for that.

19 MR. FARRELL: Thank you. And, what
20 is your understanding of the duties of Mr. Colby?

21 MR. ORPIN: Generally the traffic
22 engineers -- under what I've been involved
23 with within the Authority here -- get involved

1 in street alignment, number of lanes or width of
2 parking, turning movements, traffic signals,
3 site distances, projects of capacity to carry
4 traffic and to project what the potential might
5 be to carry the traffic on those roads and
6 highways and so forth.

7 MR. FARRELL: Basil Adams; what are
8 his duties?

9 MR. ORPIN: Presently he is in
10 charge of all the contracts in the field, all
11 the construction contracts and all the
12 demolition contracts.

13 MR. FARRELL: Primarily demolition?

14 MR. ORPIN: No, primarily
15 construction. Previous to that he was an
16 engineer but he was recommended to that job by
17 the previous Director and he's taken charge of
18 all the construction jobs in the field.

19 MR. FARRELL: What does Richard
20 Orne do?

21 MR. ORPIN: He has a similar
22 position to Mr. Barbato. He has the same job as
23 Mr. Barbato.

1 MR. FARRELL: And John Thomas?

2 MR. ORPIN: Mr. Thomas is the same.

3 MR. FARRELL: Hyman Bryan, what
4 does he do --

5 MR. ORPIN: He has been a field man;
6 demolition primarily, occasionally helping and
7 aiding the engineer on the job.

8 MR. FARRELL: And Gene Mariano?

9 MR. ORPIN: He's an administrative
10 assistant and he helps around the office and
11 with funding and will at times pick up things
12 that we need or set up meetings for us or things
13 like that as the engineering administrative
14 assistant.

15 MR. FARRELL: What about Leon
16 Jacklin; do you know what he does?

17 MR. ORPIN: Not specifically. I
18 would have to assume --

19 MR. FARRELL: Well, is Mr. Howard
20 available?

21 MRS. CORCORAN: Mr. Farrell, for
22 the record, Mr. Barbato claims that he is, in
23 fact, a registered engineer and has his number

1 available.

2 MR. FARRELL: Could you ask Mr.
3 Howard to come in?

4 MR. DROHAN: Will I have a chance
5 to cross examine Mr. Orpin or are we going to
6 keep bringing in witnesses and have me do it at
7 the end?

8 MR. FARRELL: If you want to ask
9 Mr. Orpin some questions go right ahead.

10 MR. DROHAN: Thank you, Mr. Farrell.
11 Is it O-r-p-i-n?

12 MR. ORPIN: Right.

13 MR. DROHAN: Mr. Orpin, is it
14 helpful if a person is an -- would it be
15 helpful if he was an engineer to work in your
16 department?

17 MR. ORPIN: There is engineering
18 and --

19 MR. DROHAN: Civil engineering --

20 MR. ORPIN: Depends on what he has
21 been doing in civil engineering.

22 MR. DROHAN: If a person was a
23 Registered Professional Engineer would he be

1 qualified to be a Chief Projects Engineer?

2 MR. ORMAN: Again, it depends upon
3 what his registration is and what his experience
4 has been.

5 MR. DROHAN: In the job
6 specification for the job of Chief Project
7 Engineer at the B.R.A. it says that the minimum
8 requirement is a Bachelor of Science in
9 Engineering and that he be a Registered
10 Professional Engineer. Are you familiar with
11 that?

12 MR. ORMAN: Yes.

13 MR. DROHAN: Do you agree that that
14 is one of the specifications?

15 MR. ORMAN: My recollection is
16 either he was registered or able to be
17 registered. I can't recall exactly.

18 MR. DROHAN: The experience for the
19 engineers -- it says a minimum of 10 years
20 broad civil engineering experience, including
21 some experience in engineering project
22 management; is that correct?

23 MR. ORMAN: That's right.

1 MR. DROHAN: Would you tell me, sir,
2 the experience -- the broad civil engineering
3 experience -- that Mr. Colby has in his -- do
4 you have any knowledge of Mr. Colby's work
5 experience?

6 MR. ORPIN: I happen to have had
7 read to me what his background was since he
8 graduated from school.

9 MR. DROHAN: Who read that to you,
10 sir?

11 MR. ORPIN: The Personnel
12 Department.

13 MR. DROHAN: When was that?

14 MR. ORPIN: About two weeks ago,
15 three weeks ago. It was all the traffic --

16 MR. DROHAN: Are you aware that
17 from 1952 to 1954 Mr. Colby was the -- was a
18 Planning and Design Engineer with the Traffic
19 Department with the City of Providence? Were you
20 aware of that?

21 MR. ORPIN: I believe I was aware
22 of that, yes.

23 MR. DROHAN: And that he conducted

1 traffic surveys and traffic signal timings and
2 that he spent much of his time in street and
3 freeway design; were you aware of that?

4 MR. ORPIN: I would believe that
5 would be correct. It is the same as I stated I
6 believe his duties would have been here.

7 MR. DROHAN: That from 1954 to 1958
8 he worked for the City of Providence and in that
9 capacity he d supervised a 32 to 40 man
10 department and he was involved with the
11 preparation of plans and specifications for
12 traffic signals and street redesign projects,
13 including overall inspection and control of
14 construction in the field. Were you aware of that?

15 MR. FARRELL: Mr. Orpin?

16 MR. ORPIN: I'm not sure I was
17 aware of that.

18 MR. DROHAN: Were you aware that
19 from 1958 to 1960 he was a Project Engineer with
20 Bruce Campbell Associates, Consulting
21 Engineering firm; that he spent much of his
22 activity on highway design and preparing plans
23 specifications for highway projects; that he

1 worked on the reconstruction and signalization
2 of Charles Street Circle, including roadway rebuilding,
3 new edge stones, sidewalks, drainage, street
4 lighting, signing and pavement marking, that he
5 was in charge of the plans and specifications of
6 the reconstruction of Memorial Drive in
7 Cambridge and its new extension into Watertown
8 to Arsenal street.

9 This project involved a complete highway
10 design, including such items as roadway
11 construction, curbing, storm drains, traffic
12 signals, street lighting, sidewalks and
13 landscaping. Were you aware of that, sir?

14 MR. ORMAN: No.

15 MR. DROHAN: Were you aware that
16 from 1960 to 1964 he was Sales Engineer in the
17 R. W. LeBaron Company of Waltham and in this
18 capacity he served as the principal assistant to
19 the President of this construction firm; that
20 they covered all of New England and he directed
21 construction crews on such projects as traffic
22 signal installations, including all underground
23 installation, conduits, manholes, concrete bases,

1 street and sidewalk rebuilding and
2 channelization projects.

3 That his responsibilities included cost
4 estimating, preparing competitive bids and
5 offering consulting services to cities, towns
6 and states and preparing plans and specs and
7 bidding documents. Were you aware of that?

8 MR. ORMAN: I'm not aware of it at
9 all. I'm not even aware of it because you are
10 telling me.

11 MR. WALSH: Mr. Chairman? I think
12 that Mr. Drohan should be focusing on whether
13 there are similarities --

14 MR. DROHAN: I am, sir.

15 MR. WALSH: -- and not on the
16 qualifications of this man. We know he is
17 qualified on traffic engineering --

18 MR. DROHAN: Well, we have -- I'm
19 sorry.

20 MR. FARRELL: Are you stating --
21 along with what Mr. Walsh is asking -- I'm
22 asking you the same thing: Is it your
23 contention that Mr. Colby's background is --

1 his professional background and what he did in
2 this Authority was such as that his duties and
3 responsibilities were similar to those of Mr.
4 Barbato, as described by Mr. Orpin?

5 MR. DROHAN: I'm saying that Mr.
6 Colby -- that his educational background and
7 work experience qualified him for a job as a
8 Chief Project Engineer. That his education --

9 MR. WALSH: That is not relevant.

10 MR. FARRELL: Assuming that to be
11 so --

12 MR. DROHAN: Yes.

13 MR. FARRELL: For the sake of
14 argument --

15 MR. DROHAN: Mm Hm.

16 MR. FARRELL: -- how does that
17 entitle him to bump Mr. Barbato, considering the
18 duties that he was performing and the duties
19 which Mr. Barbato performs?

20 MR. DROHAN: That they are in the
21 same salary group or rank with duties that
22 involve engineering for which he is qualified
23 and for which Mr. Barbato has less -- is not a

1 veteran --

2 MR. COLBY: He is a veteran.

3 MR. DROHAN: I'm sorry, but with
4 less seniority within the department.

5 MR. FARRELL: He is behind you by
6 about a year?

7 MR. DROHAN: Yes, sir, I think it
8 is a year. Well if we do it your way, Mr.
9 Farrell -- I think what you are saying is that
10 unless you find the exact same qualifications in
11 the exact same agency, then there is no such
12 thing as bumping?

13 MR. FARRELL: I'm not saying that,
14 I'm just going by the statute. If there are two
15 people within the Authority that have similar
16 jobs, similar responsibilities as defined by the
17 statute, then obviously Mr. Colby would have a
18 right under the statute to bump that person if
19 that person were a non-veteran.

20 MR. DROHAN: And I'm saying if
21 there is -- if you are in the same job group
22 as another individual and you are qualified by
23 experience and/or education to carry on that job

1 and that person has less seniority for one
2 reason or another than you, then you have the
3 right to bump that individual.

4 MR. WALSH: For the same job group?
5 Now, you are not suggesting that Barbato and Mr.
6 Colby are in the same job groups, are you?

7 MR. DROHAN: I am.

8 MR. WALSH: One being in
9 Transportation Planning, one being an engineer?
10 The functions vary markedly, according to what
11 Mr. Orpin is telling us.

12 MR. DROHAN: It is an engineering
13 position. My brother, I think, concedes in his
14 memorandum that the responsibilities for all of
15 these are basically alike. The point is that he
16 draws his differentiation on the fact that he
17 has investigated the background experience of
18 Mr. Colby and it doesn't fit in with the job --

19 MR. FARRELL: I don't think he said
20 that. I think he stated that the duties that Mr.
21 Barbato were performing clearly are different
22 than the duties that Mr. Colby was performing.

23 MR. STODDARD: If I may clarify?

1 I'm saying duties vary and also qualifications
2 vary regarding experience. I think this is what
3 the testimony of Mr. Orpin bears on, that the
4 experience of these two individuals are
5 different; that Mr. Orpin, if he were hiring a
6 person to fill Mr. Barbato's position today,
7 would require an individual whose background and
8 professional experience is substantially
9 different from Mr. Colby's.

10 MR. FARRELL: Well --

11 MR. WALSH: What you are saying is
12 that the jobs are different and require
13 different capabilities?

14 MR. STODDARD: (Indicating.)

15 MR. SIMONIAN: And I say, whether
16 he is qualified or not he has a right to bump
17 somebody in a similar position.

18 MR. DROHAN: And that's my position.

19 MR. WALSH: If he is doing the work
20 in one position which is similar to the work in
21 the other position.

22 MR. FARRELL: Regardless of --

23 MR. SIMONIAN: Regardless of

1 whether he is qualified or not or regardless of
2 whether the other guy is qualified or not.

3 MR. FARRELL: Mr. Howard, would you
4 describe for us the duties of Leon Jacklin?
5 Would you identify yourself for the record,
6 first?

7 MR. HOWARD: Yes. I'm Alfred Howard
8 and I'm the Transportation Planning Director at
9 the Authority.

10 MR. FARRELL: Would you describe
11 for us the duties of Mr. Leon Jacklin?

12 MR HOWARD: He has a number of
13 areas and functional assignments. In particular
14 he works in the southwest corridor, in Roxbury
15 and Dorchester districts. Now, as an aside of
16 course, with the Neighborhood Development Agency
17 and the changes in roles that may be coming
18 about that is evolving -- but as of today,
19 without this being changed, he has some area
20 wide functions.

21 He has has been exercising what I would
22 call "functional duties" in the width of street
23 and parking facility layout. Currently he is

1 also working on trying to devise exclusive bus
2 lane proposals in the City and he is also
3 excersising his layout and parking and street
4 layout functions in some of the areas that I
5 mentioned; particularly in the John Elliot
6 Square area and the area of New Dudley Street
7 too.

8 He also has had, for several years now,
9 the function of processing -- from a
10 transportation angle -- the zoning variance
11 applications that come to the Authority and, of
12 course, from the Authority to the Board of
13 Appeals. I think that's -- perhaps not all
14 inclusive but it is --

15 MR. FARRELL: Could you tell me
16 what the duties of Mr. Edwin Colby were?

17 MR HOWARD: Yes, of course. Edwin
18 is a Deputy in the department and as such he has
19 represented me in my absence and also
20 represented me when there had been conflicts of
21 meeting appointments and so forth, when I
22 couldn't be at two places at one time.

23 He also has had the function of Traffic

1 and Parking liason -- the Traffic and Parking
2 Committee is a working committee set up several
3 years ago to be an informal, staff-level meeting
4 of City Department and other interested offices
5 prior to dealing with matters which would later
6 on have public improvement commission action --

7 MR. FARRELL: Were the duties of
8 Mr. Jacklin -- the duties and responsibilities
9 of Mr. Leon Jacklin similar to those of Mr.
10 Colby's?

11 MR. HOWARD: In a broad sense. I
12 would view Mr. Colby's technical engineering
13 style of competence and, therefore, experience
14 and ability up higher than that with Mr.
15 Jacklin's. I mean -- no offense, Tom -- of
16 course, he had a higher level position and is
17 more qualified in the work that he was doing.

18 MR. FARRELL: The -- what does
19 Ellen Collins do?

20 MR HOWARD: Ellen Collins has a
21 number of functions that tend to be more of a
22 planning nature. She is currently involved --
23 in the bulk of her time -- on the grant that we

1 have from the Governmental Protective Agency
2 through the Metropolitan Area Counsel and there
3 is a grant for transportation planning studies
4 in support of the Clean Air Act and, without
5 going into detail, it involves marking
6 management and bus shelters and an evaluation of
7 the --

8 MR. FARRELL: Are her duties and
9 responsibilities similar to those of Mr. Colby?

10 MR. HOWARD: In a broad sense, but
11 there are differences.

12 MR. FARRELL: What are the
13 differences?

14 MR. HOWARD: The differences have
15 to do, within the Department, of how close we
16 get to the planning aspect of our tasks and how
17 close we are to the technical aspect of the task.

18 I judge that Ellen Collins' activities
19 deal more with the planning aspect and her
20 background, of course, is different too. She has
21 a Masters in City Planning.

22 MR. FARRELL: Richard McAlister;
23 what does Richard McAlister do?

1 MR HOWARD: He has some major
2 responsibilities in the development of South
3 Station, North Station and also some of our
4 Charlestown work; particularly tracking the
5 progress of the Chelsea Water Connector, Mystic
6 bridge and also dealing with our relationship
7 with the State on their major proposals on the
8 Central Artery. I may also add, some areas
9 within the city which may evaluate with the new
10 E.R.A. coming into play.

11 He also is -- he's an engineer. He
12 is, I think, qualified more on the technical
13 side and he excersises these talents more on the
14 projects than he does the planning-type skills.

15 MR. FARRELL: Peter Neitz?

16 MR HOWARD: Neither.

17 MR. FARRELL: Neither? What does he
18 do?

19 MR HOWARD: He is our graphics
20 person. He is a draftsman, graphic coordinator
21 and so forth. I think it is fair to say that
22 Peter is a sub-professional, where we were
23 talking before about professional people.

1 MR. FARRELL: Okay. Do you want to
2 ask any questions, Mr. Drohan?

3 MR. DROHAN: None.

4 MR. FARRELL: Thank you --

5 MR. DROHAN: I want to ask one
6 question. Is Mr. Colby qualified to carry on any
7 of the positions held by Mr. Jacklin, Miss
8 Collins and Mr. McAlister?

9 MR HOWARD: Any of them or all of
10 them? Any of them?

11 MR. DROHAN: Well, you said a
12 "broad field" --

13 MR HOWARD: As far as I'm concerned,
14 among the group -- and I have to be quite
15 frank -- his background and talent come
16 closest to those of Dick McAlister. Dick
17 McAlister is a qualified engineer and he has
18 good technical skills, as does Mr. Colby.

19 MR. DROHAN: But you had mentioned,
20 in a broad sense --

21 MR. FARRELL: No.

22 MR. DROHAN: I'm sorry?

23 MR. FARRELL: Go ahead.

1 MR. DROHAN: In a broad sense I
2 think you indicated that the jobs carried on by
3 Leon Jacklin and Mr. McAlister and Ellen Collins
4 were similar to that of Mr. Colby; is that
5 correct?

6 MR HOWARD: In a broad sense that
7 we're dealing with the area of Transportation
8 Planning. I don't know if I should elaborate at
9 all on this. I don't feel inclined, necessarily,
10 to down Mr. Jacklin or anyone else on staff or
11 to do an injustice to Mr. Colby, but the way
12 jobs are handled depends on the background of a
13 person and in -- I think that I've -- I have
14 relied more on Mr. Colby in the past for some of
15 the technical aspects rather than the pure rank
16 aspects of our work.

17 MR. DROHAN: Was there a lot of
18 over-lapping within the Department, as far as
19 anybody might get involved in somebody else's
20 area sometimes?

21 MR HOWARD: We have to do that
22 sometimes.

23 MR. DROHAN: All right. Thank you.

1 MR. STODDARD: May I ask a question
2 too, for clarification, Mr. Chairman? My I ask,
3 Mr. Howard: If the duties of Mr. Colby are
4 different from the other three employees, sir,
5 duties that Mr. Colby has had minimum experience
6 in which are not similar to the positions of the
7 other --

8 MR HOWARD: That's true, but not as
9 much as you might think because I think, in
10 fairness to myself, Mr. Colby has represented me
11 on occasion in my absence or when I have a
12 conflict. The administrative matters of the
13 department I have looked after mostly myself and
14 I've consulted with him too. I've asked his
15 opinions on it, but they are actually
16 administrative, important duties from day to day.

17 MR. STODDARD: May I ask one more
18 question? Is Mr. Colby in the same grade as the
19 other positions that were discussed?

20 MR HOWARD: You mean --

21 MR. STODDARD: Same salary grade?

22 MR HOWARD: No. And he, of course,
23 had some supervision responsibility on the

1 actions of the others and obviously because of
2 that he was familiar with my dealings, but his
3 pay grade was much in excess of the others.

4 MR. STODDARD: At least a \$10,000
5 difference between the two?

6 MR HOWARD: Close enough, for city
7 work.

8 MR. FARRELL: All right. Thank you,
9 gentlemen. You can leave now if you like.

10 MR. STODDARD: Can I point out for
11 the record, Mr. Farrell, that the discussion of
12 Mr. Jacklin's position is not entirely relevant
13 to this proceeding because he is a member of the
14 Transportation Planning Department who is senior,
15 in fact, to Mr. Colby in experience and could
16 not be considered in bumping because he is a
17 veteran who is senior in tenure to Mr. Colby.

18 MR. FARRELL: Well, Mr. Walsh --
19 do you have anything else, Mr. Drohan?

20 MR. DROHAN: I don't, Mr. Chairman.

21 MR. FARRELL: Do you still want to
22 read your memorandum for the record --

23 MR. DROHAN: I think we have

1 covered most of the points now. I would only add
2 that we also feel that Mr. Colby is qualified
3 for the job of Project Engineer and I've
4 outlined that in my memorandum. I'm sorry, my
5 apology, Project Coordinator, and I've outlined
6 that in the memorandum and -- and there is
7 also an individual I believe who was -- I
8 believe at the time that Mr. Colby was given his
9 notice of termination -- that was in the same
10 salary grade or group as he was. Other than that
11 I would just ask that you incorporate it and
12 make it part of the record.

13 MR. FARRELL: Will do. So ordered.

14 MR. SIMONIAN: Mr. Chairman, Mr.
15 Drohan says he is qualified for Project
16 Coordinator. Does he mean by that that he
17 considers Project Coordinator a similar group or
18 grade, because it isn't what he is qualified for?
19 He may be qualified for Ralph Howard's job but
20 that is not the same group or grade, is it?

21 MR. DROHAN: I believe that my
22 interpretation of it is that it is in the same
23 group or grade.

1 MR. SIMONIAN: But still, you are
2 not saying that the qualifications are as
3 important as the fact that it is in the same
4 group or grade?

5 MR. DROHAN: I consider the same
6 group or grade as critical.

7 MR. SIMONIAN: But in the
8 qualifications --

9 MR. DROHAN: Once you've
10 established that he is in the same group or
11 grade, then the qualifications are the next step
12 you look at.

13 MR. STODDARD: May I put a question
14 to Mr. Drohan concerning the engineers in his
15 position? Mr. Drohan, are you saying that Mr.
16 Colby is entitled to bump any employee who is
17 junior to him, regardless of whether it is a
18 similar office or position within the same grade?
19 Isn't that what your position is; that you don't/
20 care what it is substantially alike in the
21 organizational relationship --

22 MR. DROHAN: I do not find in the
23 section you questioned that definition.

1 MR. STODDARD: That definition is
2 applied to you by Section 52 of Chapter 121B,
3 which is the Authority's governing statute. I
4 refer specifically to 45 of Chapter 30.

5 MR. DROHAN: You referred to
6 Chapter 30, Section 45 and you said, "similar
7 offices or positions in the same grade or group"
8 as defined in that section, and I cannot find
9 that definition --

10 MR. STODDARD: You have defeated
11 that Section, have you not?

12 MR. DROHAN: I have, but I cannot
13 find the definition for "duties,
14 responsibilities, organizational relationships,
15 qualifications and other significant
16 characteristics." Nowhere in that Section can I
17 find that definition.

18 MR. STODDARD: Do you not find in
19 Sub-section 1, in that defense is a statement that
20 defines "similar offices and positions" as,
21 which are substantially alike in the duties,
22 responsibilities, organizational relationships,
23 qualifications and other significant

1 characteristics in the office or position.

2 MR. DROHAN: There is a statement.
3 It is not a definition. It is not defined
4 therein.

5 MR. STODDARD: I take a different
6 view of that.

7 MR. FARRELL: For the record, I
8 just want to reiterate that, with respect to the
9 issue of funds, the Director of the Authority
10 did supply on the 10th of September the
11 Authority with an informational memo spelling
12 out a 3.5 deficit for the coming year and it
13 spells out the reasons for the deficit and the
14 fact that we no longer -- that this Authority
15 no longer has access to the funds that we had
16 prior to 1980. That is a part of the record of
17 this hearing.

18 MR. DROHAN: And I object to that
19 on the basis that there was no evidence
20 introduced to substantiate that, it was nothing
21 but a convenient solution.

22 MR. FARRELL: If there is nothing
23 further, I'll invite any motions that any member

1 of the Authority wishes to make at this time.

2 MR. WALSH: I move that the Colby
3 matter be taken under advisement, Mr. Chairman.

4 MR. FARRELL: It has been moved
5 that the matter be taken under advisement. Do I
6 have a second to that motion?

7 MR. COFIELD: I'm prepared to vote
8 on the matter today, Mr. Chairman.

9 MR. FARRELL: Well, I was prepared
10 to second Mr. Walsh's motion, but I wouldn't
11 second it if you care to make a motion, Mr.
12 Cofield.

13 MR. COFIELD: Yes.

14 MR. FARRELL: Will you withdraw
15 your motion?

16 MR. WALSH: Yes

17 MR. COFIELD: I would like to offer
18 a few comments first. Some of the discussion
19 that's gone on today, I think, is a very close
20 call at best; the issues with respect to bumping
21 and similar duties and et cetera. I think these
22 are purely up to the interpretation of the
23 Authority and I think it's a close call because

1 the statute is, I think, not as clear as it
2 could be -- I think; one -- some of those
3 points.

4 It is also my considered opinion that
5 the Authority has some problems with respect to
6 it's actions over the last few months involving
7 some terminations and the question I raised
8 earlier in today's meeting about at the same
9 time hiring new people. It is, therefore -- as
10 I look at it, that tends to be the key issue
11 and I certainly don't question at all that we
12 have -- because I know for a fact that our
13 overall budget is not what it used to be and we
14 don't have the same funds.

15 Before Mr. Colby's presentation and Mr.
16 Drohan's presentation I questioned the addition
17 of a new staff member today on the belief that
18 one of the couple of staff people who we have
19 terminated and sought resignations from in the
20 last couple of months could fill that position.
21 In fact, I think one of the people who we hired
22 today, that we issued a decision to hire today --
23 that that position could be filled by one or two

1 of the people who we have sought resignations
2 from and/or have terminated in the last couple
3 of months.

4 It is my considered opinion that the
5 Authority has some real risk in that regard and
6 that our policy has not been consistent and,
7 from my point of view, that's the persuading
8 argument as I hear the kinds of things in the
9 presentation that has been made today and, in my
10 opinion, Mr. Colby should be reinstated and I so
11 move.

12 MR. FARRELL: Do I have a second to
13 Mr. Cofield's motion? There being no second, do
14 you want to reinstate your motion, Mr. Walsh, to
15 have the matter taken under advisement?

16 MR. WALSH: Yes, I do. I move that
17 the matter be taken under advisement.

18 MR. FARRELL: And I'll step down
19 from the chair and second that motion with the
20 note that I do want to study this memorandum
21 submitted by Mr. Drohan. All in favor? Any
22 opposed?

23 MR. COFIELD: Opposed.

1 MR. FARRELL: Mr. Cofield votes
2 that. The matter will be taken under advisement

3 MR. DROHAN: Thank you, Mr.
4 Chairman.

5 (Whereupon, at 4:40 p.m. the
6 hearing was adjourned.)
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C E R T I F I C A T E

I, Leslie A. Collins, a Shorthand Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that the foregoing Pages 1 through 76 are a true and complete transcription of my stenographic notes taken of the aforecaptioned hearing on Thursday, November 20, 1980, to the best of my knowledge, skill and ability.

Leslie A. Collins
Leslie A. Collins, Notary Public

My commission expires: September 13, 1985

